

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re: W.R. GRACE & CO., et al., Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF LUKINS & ANNIS, P.S.
FOR THE TENTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Tenth Interim Fee Application of Lukins & Annis, P.S. (the "Application").

BACKGROUND

1. Lukins & Annis, P.S. ("Lukins"), was retained as counsel for Zolonite Attic Insulation Claimants. In the Application, Lukins seeks approval of fees totaling \$122,675.00 and costs totaling \$11,917.57 for its services from July 1, 2003, through September 30, 2003.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued January 30, 1996, (the "Guidelines"), as well as for consistency with precedent established in the United States

Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served on Lukins an initial report based on our review, and received a response from Lukins, portions of which response are quoted herein.

DISCUSSION

3. In our initial report, we noted, per Lukins' Appointment Order, that the Court set a total budget for ZAI counsel of \$1.5 million in fees and \$500,000 in expenses for prosecuting the Science Trial. On July 28, 2003, the Court entered an Order increasing the budget by \$950,000 per side for additional attorney fees and expenses. From July 22, 2002, through September 30, 2003, submitted fees for Lukins are \$460,499.00 and submitted expenses are \$38,124.85 for a total of \$498,619.85. Richardson Patrick Westbrook & Brickman LLC ("RPWB") also represents The ZAI Claimants, and would thus seem to fall under the same combined budget limitations prescribed by the Court. RPWB's submitted fees from July 1, 2002, through September 30, 2003, are \$1,958,194.75, and its submitted expenses for the same period are \$626,700.50, for a total of \$2,584,895.25. The combined submitted totals for Lukins and RPWB through September 30, 2003, are \$3,083,515.10. This figure would seem to be \$133,515.10 over the total budget figure set by the Court. We find no language in either Lukins' application or RPWB's application referencing a subsequent order from the Court increasing the budget for prosecuting the Science Trial. We asked Lukins to explain this apparent budget overrun. Lukins responded as follows:

We are mindful that, despite our extraordinary efforts, the time commitment necessary to adequately represent ZAI claimants has now exceeded the budget established by Judge Fitzgerald, and that the Fee Auditor is without authority to approve payments above the figures established by the Court.

To accurately preserve a detailed accounting of time and expenses committed to this matter, nonetheless, and to keep the Court fully advised as to those time and

expenses, we have submitted our most recent Fee Application and will continue to do so in the future. In whatever manner the Court may ultimately deal with this issue, the Court will then have a full and accurate record before it.

Special Counsel to ZAI claimants, of course, will continue to vigorously represent ZAI claimants' legal interest related to the Science Trial without regard for whether the Court will ultimately approve reimbursement of costs or payment of fees.


We appreciate the response. With no authorization under the existing Order for budget exceptions, we see no choice but to recommend that Lukins' percentage of the present overrun be disallowed. By our calculations, Lukins' portion of the total ZAI Claimants' budget is 16.17% of the budget. That percentage, applied to the present total overage of \$133,515.10, calculates to \$21,589.39, and therefore we recommend a reduction of \$21,589.39 in fees.

CONCLUSION

4. Thus, we recommend approval of fees totaling \$101,085.61 (\$122,675.00 minus \$21,589.39) and costs totaling \$11,917.57 for Lukins' services from July 1, 2003, through September 30, 2003.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 
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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 5th day of February, 2004.


Warren H. Smith

SERVICE LIST

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